



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2943 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
PAS#
1002.1106.1467

January 12, 2004

William M. Garner, Project Manager
Charis Professional Services Corporation
310 Abbington Street
Henderson, Nevada 89074-4928

Subject: Species List for Fort Irwin and the National Training Center, San Bernardino County, California

Dear Mr. Garner:

We are responding to your request, dated October 16, 2003, and received in our office on January 8, 2004, for a list of endangered and threatened species that may occur southeast of the vicinity of the National Training Center and Fort Irwin (NTC), San Bernardino County, California. We understand the U.S. Air Force (USAF) is the lead federal agency for this project, and that it would assume responsibility under section 7 of the Endangered Species Act (Act) of 1973, as amended. Nellis Air Force Base (Nellis AFB) has contracted with the Charis Corporation to prepare an Environmental Assessment for an airspace change.

Nellis AFB located in Nevada is initiating a plan to change the boundaries and altitudes of the Silver Military Operations Area (MOA) in southeastern California. This project is being undertaken to better support U.S. and allied air forces during advanced combat training conducted at the National Training Center, Fort Irwin, California.

This response fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Act. The USAF has the responsibility to review its proposed activities and determine whether any listed species may be affected. If the project is a construction project¹ which may require an environmental impact statement, the Army has the responsibility to prepare a biological assessment to make a determination of the effects of the action on the listed species or critical habitat. If the Army determines that a listed species or critical habitat is likely to be adversely affected, it should request, in writing through our office, formal consultation pursuant to section 7 of the Act. Informal consultation may be used to exchange information and resolve conflicts with respect to threatened or endangered species or their critical habitat prior to

¹ "Construction project" means any major Federal action which significantly affects the quality of the human environment designed primarily to result in the building of structures such as dams, buildings, roads, pipelines, and channels. This includes Federal actions such as permits, grants, licenses, or other forms of Federal authorizations or approval which may result in construction.

a written request for formal consultation. During this review process, the Army may engage in planning efforts but may not make any irreversible commitment of resources. Such a commitment could constitute a violation of section 7(d) of the Act.

Federal agencies are required to confer with the Service, pursuant to section 7(a)(4) of the Act, when an agency action is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10(a)). A request for formal conference must be in writing and should include the same information that would be provided for a request for formal consultation. Conferences can also include discussions between the Service and the Federal agency to identify and resolve potential conflicts between an action and proposed species or proposed critical habitat early in the decision-making process. The Service recommends ways to minimize or avoid adverse effects of the action. These recommendations are advisory because the jeopardy prohibition of section 7(a)(2) of the Act does not apply until the species is listed or the proposed critical habitat is designated. The conference process fulfills the need to inform Federal agencies of possible steps that an agency might take at an early stage to adjust its actions to avoid jeopardizing a proposed species.

The Migratory Bird Treaty Act (16 U.S.C. 703-712) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for allowing unauthorized take, it must be recognized that some birds may be killed at structures such as communications towers even if all reasonable measures to avoid it are implemented. The Service's Division of Law Enforcement carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impacts on migratory birds. While it is not possible under the Act to absolve individuals or companies from liability if they follow these recommended guidelines, the Division of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals or companies who have made good faith efforts to avoid the take of migratory birds.

Candidate species are those species presently under review by the Service for consideration for federal listing. Candidate species should be considered in the planning process because they may become listed or proposed for listing prior to project completion. Preparation of a biological assessment, as described in section 7(c) of the Act, is not required for candidate species. If early evaluation of your project indicates that it is likely to affect a candidate species, you may wish to request technical assistance from this office.

The take of candidate species is not prohibited by the Act, however, we encourage you to consider their conservation in your planning process in the event they are listed prior to project completion. For information on other species of concern that may occur in the project area, the Service recommends that you review information in the California Department of Fish and Game's (CDFG) Natural Diversity Database and that you contact CDFG at (916)324-3812.

William M. Garner

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If you have any questions regarding this letter, please contact Robert McMorran of my staff at (805) 644-1766.

Sincerely,

A handwritten signature in blue ink that reads "Judy Hohman". The signature is fluid and cursive, with the first name "Judy" being more prominent than the last name "Hohman".

Judy Hohman
Division Chief
Mojave/Great Basin Desert

Enclosure

**LISTED, PROPOSED, AND CANDIDATE SPECIES WHICH MAY OCCUR IN THE
VICINITY OF THE NATIONAL TRAINING CENTER AND FORT IRWIN,
SAN BERNARDINO COUNTY, CALIFORNIA**

BIRDS

Bald Eagle	<i>Haliaeetus leucocephalus</i>	T
Least Bell's Vireo	<i>Vireo bellii pusillus</i>	E
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	E
Yellow-Billed Cuckoo	<i>Coccyzus americanus</i>	C

REPTILES

Desert Tortoise	<i>Gopherus agassizii</i>	T,CH
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FISH

Mojave Tui Chub	<i>Gila bicolor mohavensis</i>	E
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PLANTS

Lane Mountain Milkvetch	<i>Astragalus jaegerianus</i>	E
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Key:

E - Endangered T - Threatened CH - Critical habitat
C - Candidate species for which the Fish and Wildlife Service has on file sufficient information on the biological vulnerability and threats to support proposals to list as endangered or threatened.